
LOUISVILLE & NASHVILLE RAILROAD COM-
PANY *v.* HOLLOWAY, ADMINISTRATOR OF
HOLLOWAY.

ERROR TO THE COURT OF APPEALS OF THE STATE OF
KENTUCKY.

No. 209. Submitted March 15, 1918.—Decided April 15, 1918.

In an action under the Employers' Liability Act on behalf of the widow of a deceased employee, an instruction that the measure of damages should be such as would fairly and reasonably compensate her for the loss of pecuniary benefits she might reasonably have received but for her husband's death, *held* correct, as a general instruction, leaving to the defendant the right to have it supplemented by another indicating that, in estimating the amount of such compensation, future benefits must be considered at their present value.

Under the Employers' Liability Act, defendant is not entitled to have the jury instructed, as matter of law, that the value of money to the beneficiary should be measured by a specific (the legal) rate of interest, or that the duration of future benefits could not have exceeded the life expectancy of the deceased employee, as given by an actuarial table.

Whether the state court has obeyed a local rule of practice requiring

different times, without making any allowance for the fact that the whole amount of the verdict would be presently paid at one time. The instruction bore rather an implication to the contrary; for the sum was expressly stated to be that which would "compensate." The language used was similar to that in which this court has since expressed, in *Chesapeake & Ohio Ry. Co. v. Kelly*, *supra*, p. 489, 'the measure of damages which should be applied.'¹ The company had, of course, the right to require that this general instruction be supplemented by another calling attention to the fact that, in estimating what amount would compensate the widow, future benefits must be considered at their present value. But it did not ask for any such instruction. Instead it erroneously sought to subject the jury's estimate to two rigid mathematical limitations: (1) that money would be worth to the widow six per cent., the legal rate of interest; (2) that the period during which the future benefits would have continued was 28.62 years,—the life expectancy of the husband according to one of several well known actuarial tables. The company was not entitled to have the jury instructed as matter of law either that money was worth that rate, or that the deceased would not in any event have outlived his probable expectancy. See *Chesapeake & Ohio Ry. Co. v. Kelly*, *supra*, pp. 490-492. Nor need we determine whether the local rule of practice, that if instructions are offered upon any issue respecting which the jury should be instructed and they are incorrect in form or substance it is the duty of the trial court to prepare or direct the preparation of a proper instruction upon the point in place of the defective one (see *Chesapeake & Ohio Ry. Co. v. De Atley*, 241 U.S. 310, 316), was applicable in the case at bar. That is a question of state law, with which we have no concern.

¹ "The damages should be equivalent to compensation for the deprivation of the reasonable expectation of pecuniary benefits that would have resulted from the continued life of the deceased."

In the *De Atley Case*, the Kentucky Court of Appeals assumed for the purposes of its decision that the local rule applied, and was thereby led to decide a question of federal law. Consequently we had and exercised jurisdiction to review its decision upon that question.

Second: The third assignment, in so far as it relates to the refusal of the Court of Appeals to reverse the judgment "on the ground that the damages are excessive," is not reviewable here. *Southern Ry. Co. v. Bennett*, 233 U. S. 80, 86. It does not appear in the case at bar, as it did in *Chesapeake & Ohio Ry. Co. v. Gainey*, 241 U. S. 494, 496, that the action of the Court of Appeals in sustaining the verdict was necessarily based upon an erroneous theory of federal law. As to the alleged error of the Court of Appeals in holding as part of the benefit the widow might have received "not only her support and maintenance of \$50.00 a month, but in addition thereto, one-half of the savings, which decedent might have accumulated," it is a sufficient answer that the trial court did not give any instruction on that subject, nor was it requested to give any, and that the Court of Appeals did not hold as stated that the widow could share in the loss to the estate. It held that the pecuniary benefit which the jury was entitled to consider in estimating the widow's damages was not merely what she would have spent for maintenance and support, but what she would otherwise have received from her husband.

Affirmed.